

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte EDWARD ELLIS EIBLING, KYUNG HWAN KO and LILY ZHU

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Appeal No. 2005-1303  
Application No. 09/385,725

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ON BRIEF

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Before JERRY SMITH, BARRETT and RUGGIERO, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-22, which constitute all the claims in the application.

The disclosed invention pertains to a method for determining a power level of a set of forward-link signals transmitted by a base station in a wireless system.

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Representative claim 1 is reproduced as follows:

1. A method for determining a power level of a forward-link signal in a wireless system, the method comprising the steps of:

determining a plurality of power-indicative signal characteristic of the signal; and

determining the power level of the signal for a measurement interval using the power-indicative signal characteristics, the measurement interval having a duration smaller than or equal to the period in which at least one power-indicative signal characteristic can change.

The examiner relies on the following reference:

Weaver, Jr. et al. (Weaver) 5,715,526 Feb. 3, 1998

Claims 1-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Weaver.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

#### OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into

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consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the disclosure of Weaver does not fully meet the invention as set forth in claims 1-22. Accordingly, we reverse.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he finds the claimed invention to be fully met by the disclosure of Weaver (answer, pages 4-5). With respect to independent claims 1 and 8, appellants argue that the examiner is incorrect in asserting that

the power level in Weaver is determined for a measurement interval having a duration smaller than or equal to the period in which at least one power-indicative signal characteristic can change. Appellants assert that the power indicative signals of Weaver can change every frame, however, the power level in Weaver is determined over a multi-frame interval. Appellants argue that the portions of Weaver relied on by the examiner fail to support the examiner's finding of anticipation (brief, pages 3-7).

The examiner responds that Weaver discloses that the information rate of the traffic channel can change on a frame by frame basis and that the measurement interval can be a frame (answer, pages 5-6). Appellants respond that the disclosure in Weaver that data rate of a traffic channel can change on a frame by frame basis does not teach or suggest the claimed power level determination over a measurement interval having that duration. Appellants reiterate their position that power levels in Weaver are determined over a multi-frame interval (reply brief, pages 1-3).

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We will not sustain the examiner's anticipation rejection of independent claims 1 and 8 for essentially the reasons argued by appellants in the briefs. Most particularly, the fact that parameters which relate to the power level of the signal, such as frame rate, can change every frame has nothing to do with the period over which the power level of the signal is actually determined. We agree with appellants that Weaver only measures or determines the power level of the signal over a multi-frame interval even though the parameters which contribute to the power level of the signal can be changed every frame. This relationship is clearly contrary to the claimed invention which requires that the power level determination be made over a measurement interval having a duration smaller than or equal to the period in which at least one power-indicative signal characteristic can change.

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Since we have not sustained the examiner's rejection of independent claims 1 and 8, we also do not sustain the rejection with respect to any of the dependent claims. Therefore, the decision of the examiner rejecting claims 1-22 is reversed.

REVERSED

*Jerry Smith*

JERRY SMITH  
Administrative Patent Judge

*Lee E. Barrett*

LEE E. BARRETT  
Administrative Patent Judge

*Joseph F. Ruggiero*

JOSEPH F. RUGGIERO  
Administrative Patent Judge

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